

September 15, 2016

Director Richard Cordray
Consumer Financial Protection Bureau
Washington, D.C.

Re: Outline of Proposed Regulations on Debt Collection

Dear Director Cordray:

The undersigned consumer protection, civil rights, and legal services groups write to express our significant concerns with the [outline of proposed regulations on debt collection](#) issued by the Consumer Financial Protection Bureau on July 28, 2016. The proposal represents a missed opportunity to fundamentally improve protections for consumers victimized by predatory debt collection practices.

Some of the proposed changes will address certain debt collector conduct that hurts consumers. For example, we support the CFPB's proposal to: 1) require the transfer of information from prior attempts to collect the debt, 2) prohibit collectors from "parking" debts on credit reports without informing the consumer about the debt, 3) require collectors to tell subsequent collectors about unresolved disputes, and 4) require the resolution of those disputes before collection activity can continue. However, significant aspects of the outline fall far short of the reforms needed to protect consumers from abusive debt collection practices.

Permits Collection Without Sufficient Substantiation. Attempts to collect debt from the wrong person or in the wrong amount are a pervasive problem. We are disappointed that, given the meaningful requirements for review of original account-level documentation in several recent CFPB enforcement actions, the proposal only contains a short list of "fundamental information" that a collector "could" – but is not required to – obtain and review to look for "warning signs" that their information is inaccurate or inadequate. In other words, the outlined proposal would continue to permit collection based on a few data points in a spreadsheet without any mandated review of supporting documentation. Under the proposal, collectors would also be permitted to rely on "representations of accuracy" by debt owners and prior debt sellers. At the very least, to prevent further abuses, collectors must be required to review original account-level documentation for each account before initiating collection.

Effectively Prevents Private Enforcement. By simply mandating that collectors have systems and warning signs, consumers' ability to vindicate their rights and enforce the substantiation requirements will be very difficult. How can consumers know what systems collectors have, whether they have been followed, whether warning signs existed or were ignored? To make the system self-enforcing, the current collector must be responsible for the accuracy of all information used in its collection efforts, even if errors originated with a prior owner of the debt. Collectors would be able to protect themselves through indemnity agreements.

Disputes Inadequately Investigated. When a consumer disputes the accuracy of a collector's information, the proposal neither requires the collector to review original account-level documents nor prohibits it from relying on robo-signed affidavits. Meaningful investigations would require collectors to review original account-level documentation and always provide those documents to consumers regardless of when they submitted the dispute.

Lawsuits and Default Judgments Based on Faulty Documentation. The proposal requires collectors to have vague “reasonable support” before suing but again fails to require a review or possession of original account-level documentation. Instead, collectors’ suits against consumers may be brought based on affidavits or unspecified “alternative means” to document debts. The rule should instead adopt stricter standards from the CFPB’s recent enforcement actions. The CFPB should also require collectors to file copies of original account-level documentation with the complaint and to provide the court with additional relevant documentation to support their claims when seeking default judgment. These requirements will provide consumers with far more substantive, meaningful protections than the proposal’s litigation disclosure, which is unlikely to significantly decrease the number of default judgments.

Call Harassment Will Continue. As noted in the [CFPB Annual Report on Debt Collection](#), repeated and continuous calls from collectors to consumers remains one of the industry’s most harassing and abusive practices. Yet this proposal would allow up to 6 calls per week, per account – resulting in potentially dozens of calls a week for borrowers with multiple accounts in default. The CFPB’s own survey shows that 72% of consumers who have been contacted about repaying a debt in the prior year have two or more debts in collection. Three attempted calls per consumer and one conversation per week is more than enough. Collectors also must be required to inform consumers that they have the right to end all collection calls.

Other Concerns. We are distressed that the proposal would allow collectors to leave messages with neighbors, employers, and friends - conduct that is explicitly illegal under 15 U.S.C. 1692b. Additional concerns with the proposal include: inadequate protections for dealing with time-barred debt; confusing validations notices; new disclosures in place of substantive protections, which cumulatively are likely to overwhelm consumers and make it more difficult for them to exercise their rights; insufficient protections for medical debt, student loan debt, and decedent debt; the absence of a prohibition on mandatory arbitration clauses; a lack of needed clarifications regarding collectors’ promises relating to credit reporting; and the failure to address language access concerns for consumers with limited English proficiency who do not speak Spanish.

Undermines State Protections. Many of the provisions in this proposal are far less protective of consumers than some state and local laws and rules (e.g. North Carolina, California, and New York). The proposal will undermine efforts in other states to strengthen state protections by creating the false impression that the CFPB has already fixed the problems in the debt collection industry. This is especially problematic given the importance of state law reform to deal with issues such as state statutes of limitations and state court litigation.

The CFPB is the first federal agency with authority to issue regulations under the Fair Debt Collection Practices Act since Congress passed the law nearly 40 years ago. Congress provided that authority to make the world a safer place for consumers. Our organizations look forward to continued dialogue with the CFPB to ensure that these rules will be substantially strengthened before they are issued.

Please contact Margot Saunders (mrsaunders@nclc.org) or April Kuehnhoff (akuehnhoff@nclc.org), attorneys at the National Consumer Law Center (617-542-8010), for more information about our concerns.

Thank you for your attention to this matter.

Sincerely,

National Groups

Americans for Financial Reform
Center for Popular Democracy
Civil Justice
Coalition on Human Needs
Consumer Action
Consumer Federation of America
Consumers for Responsible Lending
Consumers Union
The Leadership Conference on Civil and Human Rights
National Association of Consumer Advocates
NAACP
National Association of Consumer Bankruptcy Attorneys
National Consumer Law Center (on behalf of its low-income clients)
National Council of La Raza
National Fair Housing Alliance
People's Action
U.S. PIRG

State and Local Groups

Tuscaloosa Citizens Against Predatory Practices, AL
Alaska Public Interest Research Group
Southwest Center for Economic Integrity, Arizona and New Mexico Divisions, AZ
California Reinvestment Coalition
Greenlining, CA
Housing and Economic Rights Advocates (HERA), CA
Public Law Center, CA
Connecticut Citizen Action Group
Connecticut Legal Services
Delaware Community Reinvestment Council
Florida Alliance for Consumer Protections
Jacksonville Area Legal Aid, FL
Legal Aid Society of Palm Beach County, FL
Kentucky Equal Justice Center
Maryland Consumer Rights Coalition, MD
Public Justice Center, MD
Greater Boston Legal Services, MA
MetroWest Legal Services, MA
The Midas Collaborative, MA
Montana Organizing Project
North Carolina NAACP
NCLEJ
NC Justice Center
Legal Services of New Jersey
Center for NYC Neighborhoods
MFY Legal Services, NY
New Economy Project, NY
Western New York Law Center
Community Legal Services Inc., PA

Community Legal Services of Philadelphia, PA
Philadelphia Unemployment Project, PA
Legal Aid Clinic of the InterAmerican University School of Law, Puerto Rico
Hays Cauley PC, SC
South Carolina Appleseed Legal Justice Center
Virginia Organizing
Virginia Poverty Law Center
Statewide Poverty Action Network, WA
West Virginia Center on Budget and Policy